# **Request for Reconsideration after Final Action**

# The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86224119
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86224119/large
LITERAL ELEMENT	GEM
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style,
EVIDENCE SECTION	ON
EVIDENCE FILE N	JAME(S)
ORIGINAL PDF FILE	evi_2061693734-20151007170132678517Request_for_Reconsideration_GEM.p
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DESCRIPTION OF EVIDENCE FILE	Request for Reconsideration Declaration of Eugene Pak and Exhibits
GOODS AND/OR S	ERVICES SECTION (029)(no change)
GOODS AND/OR S	ERVICES SECTION (030)(current)
INTERNATIONAL CLASS	030
DESCRIPTION	natural coconut sweetener, coconut sugar, coconut flour
FILING BASIS	Section 1(b)
GOODS AND/OR S	ERVICES SECTION (030)(proposed)
INTERNATIONAL CLASS	030
TRACKED TEXT DESC	CRIPTION
natural coconut sweet	ener, coconut sugar, coconut flour; coconut sugar, coconut flour
FINAL DESCRIPTION	coconut sugar, coconut flour
FILING BASIS	Section 1(b)
GOODS AND/OR S	ERVICES SECTION (032)(no change)
SIGNATURE SECT	TON
RESPONSE SIGNATURE	/Eugene M. Pak/
SIGNATORY'S NAME	Eugene M. Pak
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	510-834-6600
DATE SIGNED	10/07/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMA	TION SECTION
SUBMIT DATE	Wed Oct 07 17:03:42 EDT 2015

TEAS STAMP	USPTO/RFR-206.169.37.34-2 0151007170342306054-86224 119-540f51d3b4c23bc457420 17d58dcb84dbac7519c958d84 73c23919167682c699-N/A-N/ A-20151007170132678517
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PTO Form 1960 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 07/31/2017)

# Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86224119** GEM(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86224119/large) has been amended as follows:

## **EVIDENCE**

Evidence in the nature of Request for Reconsideration Declaration of Eugene Pak and Exhibits has been attached.

# **Original PDF file:**

evi\_2061693734-20151007170132678517\_.\_Request\_for\_Reconsideration\_GEM.pdf

# Converted PDF file(s) (9 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

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Evidence-7

Evidence-8

Evidence-9

# **Original PDF file:**

evi 2061693734-

20151007170132678517\_.\_vised\_Decl\_of\_Eugene\_Pak\_re\_GEM\_\_Req\_for\_Recon\_\_and\_Exhibits.pdf

# **Converted PDF file(s)** ( 60 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

Evidence-7

Evidence-8

Evidence-9

- Evidence-10
- Evidence-11
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Evidence-57 Evidence-58 Evidence-59 Evidence-60

## CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 030 for natural coconut sweetener, coconut sugar, coconut flour

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

# **Proposed:**

Tracked Text Description: natural coconut sweetener, coconut sugar, coconut flour; coconut sugar, coconut flour

Class 030 for coconut sugar, coconut flour

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

## **SIGNATURE(S)**

**Request for Reconsideration Signature** 

Signature: /Eugene M. Pak/ Date: 10/07/2015

Signatory's Name: Eugene M. Pak

Signatory's Position: Attorney of Record

Signatory's Phone Number: 510-834-6600

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the

highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86224119

Internet Transmission Date: Wed Oct 07 17:03:42 EDT 2015 TEAS Stamp: USPTO/RFR-206.169.37.34-2015100717034230

6054-86224119-540f51d3b4c23bc45742017d58 dcb84dbac7519c958d8473c23919167682c699-N

/A-N/A-20151007170132678517

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of

Franklin Baker, Inc.

Serial No.: 86224119

Filed: March 18, 2014

Intl. Class: 29, 30, 32

Mark: GEM

Commissioner for Trademarks P.O. Box 1451 Alexandria, Virginia 22313-1451

# REQUEST FOR RECONSIDERATION

# I. <u>INTRODUCTION</u>

In the Final Office Action dated April 7, 2015, the Examining Attorney continued to refuse registration of Applicant's mark GEM (the "Mark") at to the goods "virgin coconut oil" only, under Section 2(d) of the Lanham Act on the grounds that the Mark is allegedly confusing similarly to the registered marks:

**GEM** (Reg. No. 3152596) in class 29 for "pure corn oil and pure olive oil" and class 30 for "red wine vinegar," and

**GEM** (Reg. No. 3568845) in class 29 for "edible oils, namely, extra virgin olive oil, organic extra virgin olive oil, pomace olive oil, canola oil, salad oil." (hereafter the "Cited Marks")

These registrations are both owned by Sovena USA, Inc. of Rome, New York ("Sovena" or the "Cited Marks Owner"). For the reasons set forth below, Applicant respectfully requests withdrawal of the refusal to register.

## II. THERE IS NO LIKELIHOOD OF CONFUSION.

Whether a likelihood of confusion exists between two marks is determined by the *Du Pont* test established in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). The *Du Pont* test sets forth several factors to examine in analyzing whether a likelihood of confusion exists, including:

- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
- The relatedness of the goods or services as described in an application or registration or in connection with which a prior mark is in use;
- The similarity or dissimilarity of established, likely-to-continue trade channels;
- The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing;
- The number and nature of similar marks in use on similar goods; and
- A valid consent agreement between the applicant and the owner of the previously registered mark.

Id.; see TMEP Section 1207.01.

## A. The Cited Mark Owner Has Consented to Registration of Applicant's Mark

As Applicant noted in its prior Response, the Cited Marks Owner, Sovena, and Applicant have entered into a consent agreement under which Sovena has consented to the registration of Applicant's Mark for coconut oil. The consent agreement is attached to the Declaration of Eugene Pak ("Pak Decl."), submitted concurrently. *See* Pak Decl., ¶ 2 and Ex. A. Sovena does not make or market coconut oil under the GEM mark (and Applicant does not make olive oil or other oils) and both parties have used their marks for decades -- Applicant since the 1900s and Sovena since 1933. *See id*. The parties are both sophisticated companies that have been in the food products business for a long time, know their industries, and believe that their

respective uses of the mark GEM on *different* products is not likely to cause confusion. *Id.; see also* TMEP 1207.01(d)(viii) ("when those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't") (citing *In re E.I. du Pont de Nemours & Co.*, 476 F.2d at 1363, 177 USPQ at 568).

## B. The Goods Are Different.

Not only has Sovena consented to the registration of Applicant's mark, but the goods of the parties are also different. Applicant's mark is to be used with coconut oil, which is a somewhat uncommon oil used in cooking. Sovena, in contrast, does not make coconut oil at all and has not in the past 80 years, and has not registered its mark with coconut oil. Rather, Sovena makes cooking and edible oils commonly found in many kitchens (e.g., olive oil, corn oil, canola oil, salad oil).

While the first Office Action asserted that the parties' goods were related and attached ten federal registrations as evidence that coconut oil is related to these other oils, a closer look at those ten registrations demonstrates that they are not probative at all. Of the ten registrations, although they all list "coconut oil" in the identification of goods, it appears that only two of the registered marks are actually used with coconut oil purchased by consumers. *See* Pak Decl., ¶ 3-12. As is too often typical of registrations that have a long "laundry list" of goods, the marks are not actually used on all the listed goods.

The first mark listed, MASTER CHEF and Design (Reg. No. 3458094), was registered by the international food conglomerate Cargill (the largest private company in the US) for a wide variety of food products. Pak Dec., ¶ 3 and Ex. B. A search of the Cargill website at

www.cargill.com, however, finds no use of the mark MASTER CHEF with coconut oil. *Id.* The "Salad and Cooking Oils" page on the Cargill site does list a MASTER CHEF peanut oil, but no coconut oil. *Id.* Similarly the shortenings page on the site lists MASTER CHEF shortenings, but no coconut oil or shortening. *Id.* Most notably, even the "coconut oil" page on Cargill does not list any MASTER CHEF mark, but indicates that Cargill sells bulk coconut oil to producers, rather than as a consumer product. *Id.* Furthermore, this registration was cancelled as of February 6, 2015. *Id.* In short, the reference to the cancelled MASTER CHEF registration is of little probative value as the mark does not appear to be used on coconut oil at all.

The second mark listed, RANI BRAND AUTHENTIC INDIAN PRODUCTS (Reg. No. 4055459) does appear to be used on coconut oil as it is found on the website for the owner at <a href="https://www.ranisworldfoods.com">www.ranisworldfoods.com</a>. Pak Decl., ¶ 4.

The third mark listed, AMERICAN DELIGHT (Reg. No. 4095670) is registered by Pexim, Inc. of Georgia for a long laundry list of food products ranging from "frozen and canned vegetables" to "meat, fish, poultry and game" to "fruit puree." Pak Decl., § 5. But there is no evidence that the mark is actually used with coconut oil. A review of the Pexim website "Products" page at <a href="www.pexim-usa.com/Products">www.pexim-usa.com/Products</a> found reference to several products, but no coconut oil. *Id.* at Ex. C. A Google search for "American Delight Coconut Oil" found no results for such a product. *Id.* Again, it is highly unlikely that the mark is actually used with coconut oil.

The fourth mark listed, BANGO (Reg. No. 4350969) is registered by a 17Group LLC of Reno, Nevada. The specimens of use submitted with the registration, however, are clearly just graphic design images of proposed product packaging rather than actual packaging used. *See* Pak Decl.,¶ 6 and Ex. D (these should not have been accepted as a specimen). And none of the

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purported specimens of use are for coconut oil.. *Id.* Again, a laundry list of food products is listed in the registration (from "blanched nuts" to "fish" to "soybeans") but it is unlikely that the mark is used at all, let alone with coconut oil. *Id.* A Google search for "Bango Coconut Oil" found no results for such a product. *Id.* A Google search for the owner 17Group of Reno, Nevada also found no website for this company. *Id.* In short, this registration is of little if any probative value.

The fifth registration listed, KUCH NAHI (Reg. No. 4518235) is registered by IBS India of Braintree, Massachusetts for yet another long "laundry list" of food products. Pak Decl.,¶ 7. But a Google search for "Kuch Nahi Coconut Oil" again found no results. *Id.* And a Google search for IBS India's website also found no relevant results. *Id.* and Ex. E.

The sixth registration listed, MAZDA and Design (Reg. No. 4426466), is registered by a sole proprietorship, Simarjit Singh who does business as All India Spices, and is based in Auburn, Washington. Pak Decl.,¶ 8. A review of the registrant's website at <a href="https://www.allindiapsice.com">www.allindiapsice.com</a>, however, finds no coconut oil at all. *Id.* A search for coconut oil using the website's search box does not find any results, and while there is a link to an "Oil" page, that page does not list or identify any products at all, but simply states "no product available." *Id.* and Ex. F. And a Google search for "Mazda Coconut Oil" does not find any such product. *Id.* Again, there is no evidence that the mark is used with coconut oil.

The seventh mark listed, a registration for BUTTER 2.0 (Reg. No. 4495617) also does not appear to be used with coconut oil at all. The owner of the registration,, Prosperity Organics of Boise, Idaho, is a maker of spreads that serve as a butter substitute (which explains the meaning behind the mark BUTTER 2.0). Pak Decl.,¶ 9. But a review of Prosperity Organics' website, which is at <a href="https://www.meltorganics.com">www.meltorganics.com</a>, and its specimen of use, do not find any coconut oil

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at all. *Id.* and Ex. G. There is no coconut oil on the website, and the specimen is for a MELT brand spread which only indicates that the spread's ingredients feature coconut oil (and the mark BUTTER 2.0 actually serves as more of a tagline than the product name). *Id.* Again, this registration like the other ones listed above, is of little or no relevance to show use of a mark on coconut oil, let alone on coconut oil and olive oil, corn oil, and canola oil.

The eighth mark, a registration for EARTH CIRCLE ORGANICS owned by River Canyon Retreat of Grass Valley, California (Reg. No. 4334472), is used with coconut oil (Pak Decl., ¶ 10), however, it does not appear to be used with olive oil, corn oil, or canola oil. *Id.*Again, the registration contains a long laundry list of food products, but the registrant's website at <a href="https://www.earthcircleorganics.com">www.earthcircleorganics.com</a> does not show any consumer packaged olive oil (only actual olives). *See id.* and Ex. H. While the company does appear to sell unbranded Tunisian olive oil as a "bulk ingredient," it is not a consumer product like the branded and packaged coconut oil it sells. *Id.* So while this mark is used on consumer packaged coconut oil, it does not appear to be used on consumer packaged olive, corn, or canola oil, and therefore does not show that consumers are accustomed to seeing such products from the same source or under the same brand.

The ninth mark, a registration for FINE FOOD DITTMANN and Design (Reg. No. 4541722) is owned by a German company, Feinkost Dittmann Reichold Feinkost GmbH ("Dittmann") and again contains a long laundry list of foods from tuna fish to apple sauce to caviar. Pak Decl., ¶ 11. But a review of the Dettmann website at <a href="www.feinkost-dittmann.de">www.feinkost-dittmann.de</a> finds no coconut oil at all, and a search using the website's search function for both "coconut oil" and "kokosnussol" (German for coconut oil) turns up no results. *Id.* and Ex. I. Again, like most of the other marks listed above, it appears that the mark is not used on coconut oil and therefore

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this registration is of little, if any, probative value as to whether consumers believe coconut oil and other oils typically emanate from the same source.

The tenth and final mark cited, CELIA'S GOURMET FOODS (Reg. No. 4517535) owned by Thomas Stuntz doing business as Celia's Gourmet Foods in Bend, Oregon is also not probative. A review of the registrant's website at <a href="www.celiasgourmetfoods.com">www.celiasgourmetfoods.com</a> found only olive oil and no coconut oil. Pak Decl., ¶ 12 and Ex. J. And a Google search for "Celia's Gourmet Foods coconut oil" found no such product. but only a reference to the trademark registration itself *Id.* Again, this registration also has little or no probative value since the mark does not appear to be used on coconut oil.

In summary, only two of the ten registered marks identified in the Office Action are even used on coconut oil (RANI BRAND AUTHENTIC INDIAN PRODUCTS and EARTH CIRCLE ORGANICS), and only one of these marks (the RANI mark) even appears to be used on olive oil, corn oil, or canola oil. The fact that only **one** out of these ten marks is used with both coconut oil and olive oil, corn oil, or canola oil actually supports Applicant's position and point, namely, that coconut oil (an uncommon kitchen oil) is not so related to the other types of common kitchen oils, and therefore confusion is unlikely. The fact that others have *registered* a mark for coconut oil is not relevant in light of evidence that they do not actually *use* the mark with coconut oil.

# C. Applicant's Long-Standing Use of GEM on Coconut Products Is Relevant.

In its earlier response, Applicant pointed out that it is a well-known maker of **coconut** products which it has sold under the GEM mark for over 110 years, since 1900, and that Applicant owns a long-standing and active federal registration for the mark GEM (Reg. No. 0220053) for "prepared coconut" which dates back to 1927. Applicant argued that due to its

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long-standing use of the GEM mark since 1900 on coconut products, consumers are not likely to believe that Applicant's GEM coconut oil is made by Sovena (a company that imports olive oil), but is instead a product from Applicant, a well-known and long-standing maker of coconut products.

In the second Office Action, however, the Examiner dismissed this argument by asserting that a claim that a mark is famous, or evidence thereof, is "not relevant unless registration is sought under Section 2(f)" and cites three case. The Examiner is apparently quoting TMEP Section 1211.02(b)(vii). See TMEP § 1211.02(b)(vii) (same three cases cited). But TMEP Section 1211.02(b)(vii) is not applicable. That section deals with objections to a mark being primarily merely a surname under Section 2(e) of the Act. In such a situation, whether a mark is primarily a surname or not should not depend on how famous the mark is, so evidence that the term is famous would not be relevant for purposes of analyzing if a mark is primarily a surname, unless one were asserting a Section 2(f) claim.

But here, there is no surname objection under Section 2(e), so the quoted TMEP Section 1211.02(b)(vii) is meaningless. Rather, this is a Section 2(d) issue.

Under Section 2(d), evidence that Applicant has used and registered the GEM mark for coconut products is relevant for purposes of analyzing confusion. In fact, the strength of a mark is considered a relevant *DuPont* factor. Here, because the GEM mark has been used for over 100 years by Applicant on coconut products, it is likely that consumers seeing the GEM mark used on coconut oil will likely (and correctly) believe that it is yet another coconut product coming from Applicant, rather than a product from the Sovena company which has not and does not make any coconut products, let alone any coconut oil, under the GEM mark. Confusion is unlikely.

III. OPPORTUNITY TO DIVIDE

The Section 2(d) refusal is only as to goods, coconut oil. In light of this, should the

Examiner continue to refuse registration after this Request for Reconsideration, Applicant

respectfully requests that it be given the opportunity to divide the application as to the other

identified goods (coconut cream, coconut sugar, coconut flour, coconut milk).

IV. <u>IDENTIFICATION OF GOODS</u>

For unrelated reasons, Applicant is deleting coconut sweeteners from the Application.

For all of the foregoing reasons, including the consent of Sovena, the owner of the Cited

Marks, Applicants requests that is application be approved for publication.

DATED: October 7, 2015 WENDEL, ROSEN, BLACK & DEAN LLP

By: / Eugene M. Pak/

Eugene M. Pak

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Counsel for Applicant Franklin Baker, Inc.

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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of

Franklin Baker, Inc.

Serial No.: 86224119

Filed: March 18, 2014

Intl. Class: 29, 30, 32

Mark:

GEM

DECLARATION OF EUGENE M. PAK IN SUPPORT OF REQUEST FOR RECONSIDERATION

Alexandria, Virginia 22313-1451 Commissioner for Trademarks P.O. Box 1451

# I, Eugene M. Pak, hereby declare:

- and of my own personal knowledge as to the matters set forth herein this declaration in support of Applicant's Request for Reconsideration I can testify competently Baker, Inc. ("Applicant"), the Applicant for the above-referenced trademark application. I make I am an attorney at Wendel Rosen Black & Dean LLP, counsel for Franklin
- copy of the consent agreement signed by Sovena and Applicant is attached hereto as Exhibit A ("Sovena") has consented in writing to the registration of Applicant's Mark. A true and correct The owner of the marks cited against Applicant's application, Sovena USA, Inc.
- Cargill (the largest private company in the US) for a wide variety of food products. On or about and Design (Reg. No. 3458094), this was registered by the international food conglomerate attached evidence regarding ten registration. As to the first mark identified, MASTER CHEF In the first Office Action issued against the Application, the Examiner cited and

October 6, 2015, I reviewed the Cargill website and performed a search on the Cargill website using the site's search function at <a href="www.cargill.com">www.cargill.com</a>, however, I found no use of the mark MASTER CHEF with coconut oil. The "Salad and Cooking Oils" page on the Cargill website does list a MASTER CHEF peanut oil, but does not list coconut oil. Similarly the shortenings page on the site lists MASTER CHEF shortenings, but does not list any coconut oil or coconut shortening. Most notably, even the "coconut oil" page on Cargill does not list any MASTER CHEF mark, but indicates that Cargill sells <a href="bulk">bulk</a> coconut oil to producers, rather than as a consumer product. Furthermore, this registration was cancelled as of February 6, 2015. The reference to the cancelled MASTER CHEF registration appears to have little probative value as the mark does not appear to be used on packaged coconut oil at all. A true and correct copy of printouts of these pages from the Cargill website are attached hereto as <a href="Exhibit B">Exhibit B</a>.

- 4. The second mark listed, RANI BRAND AUTHENTIC INDIAN PRODUCTS (Reg. No. 4055459) does appear to be used on coconut oil as it is found on the website for the owner at <a href="https://www.ranisworldfoods.com">www.ranisworldfoods.com</a>.
- 5. The third mark listed, AMERICAN DELIGHT (Reg. No. 4095670) is registered by Pexim, Inc. of Georgia for a long laundry list of food products ranging from "frozen and canned vegetables" to "meat, fish, poultry and game" to "fruit puree." But there is no evidence that the mark is actually used with coconut oil. On or about October 6, 2015, I reviewed the Pexmin website including the "Products" page at <a href="https://www.pexim-usa.com/Products">www.pexim-usa.com/Products</a> and while I found reference to several products, there was no reference to coconut oil. On or about October 6 and 7, 2015, I did a Google search for "American Delight Coconut Oil" and found no results for such a product. It is highly unlikely that the mark is actually used with coconut oil. A true

and correct copy of a printout of the Pexim "Products" website page and first page of Google search results is attached hereto as <a href="Exhibit C">Exhibit C</a>.

- of Reno, Nevada. I reviewed the specimens of use submitted to the USPTO with the registration, however, and they are clearly just graphic design images of proposed product packaging rather than actual packaging used, and none of the purported specimens of use are for coconut oil.. Again, a laundry list of food products is listed in the registration (from "blanched nuts" to "fish" to "soybeans") but it is unlikely that the mark is used at all, let alone with coconut oil. On or results for such a product by the registrant. While the results showed a Bango Palm Oil Company in Cameroon, Africa, there was no reference to a BANGO coconut oil made by 17Group of Reno, Neavda.. I also did a Google search for the owner 17Group of Reno, Nevada also found no operating website for this company. In short, this registration is of little if any probative value. A true and correct copy of a specimen of use submitted with this registration, and the first page of the Google search results is attached hereto as Exhibit D.
- 7. The fifth registration listed, KUCH NAHI (Reg. No. 4518235), is registered by IBS India of Braintree, Massachusetts for yet another long "laundry list" of food products. On or about October 6 and 76, 2015, I did a Google search for "Kuch Nahi Coconut Oil" again found no results. I also did a Google search for IBS India's website and found no relevant results, though there is an educational institution in India that goes by that name but does not appear to be related to the registrant. A true and correct copy of a printout of the first page of the Google search results is attached hereto as Exhibit E.

- 8. The sixth registration listed, MAZDA and Design (Reg. No. 4426466) is registered by a sole proprietorship, Simarjit Singh who does business as All India Spices, and is based in Auburn, Washington. I reviewed the registrant's website at <a href="www.allindiapsice.com">www.allindiapsice.com</a>, however, and found no coconut oil. A search for coconut oil using the website's search box does not find any results, and while there is a link to an "Oil" page, that page does not list or identify any products at all, but simply states "no product available." On or about October 6 and 7, 2015 I did a Google search for "Mazda Coconut Oil" and found no such product. A true and correct copy of the search results page at <a href="www.allindiaspice.com">www.allindiaspice.com</a> and the first page of the Google search results are attached hereto as <a href="Exhibit F">Exhibit F</a>.
- 9. The seventh mark listed, a registration for BUTTER 2.0 (Reg. No. 4495617) also does not appear to be used with coconut oil at all. The owner of the registration, Prosperity Organics of Boise, Idaho, is a maker of spreads that serve as a butter substitute (which explains the meaning behind the mark BUTTER 2.0). based on my review of Prosperity Organics' website at <a href="https://www.meltorganics.com">www.meltorganics.com</a> on or about October 6, 2015. I reviewed the website and the specimen of use by Prosperity Organics for the BUTTER 2.0 registration, I did find any use of the mark with coconut oil. There is no coconut oil on the website, and the specimen is for a MELT brand \*spread\* which only indicates that the spread\*s ingredients feature coconut oil. The specimen appears to use the mark BUTTER 2.0 as more of a tagline than the product name. A true and correct copy of the specimen is attached hereto as <a href="https://www.meltorganics.com">Exhibit G</a>.
- 10. The eighth mark, a registration for EARTH CIRCLE ORGANICS owned by River Canyon Retreat of Grass Valley, California (Reg. No. 4334472) is used with coconut oil, however, it does not appear to be used with olive oil, corn oil, or canola oil. The registration contains a long list of food products, but I reviewed the registrant's website at

www.earthcircleorganics.com and found no consumer packaged olive oil (only actual olives). While the company does appear to sell an unbranded Tunisian olive oil as a "bulk ingredient," it is not a consumer product like the branded and packaged coconut oil that it sells. So while this mark is used on consumer packaged coconut oil, it does not appear to be used on consumer packaged olive, corn, or canola oil, and therefore does not show that consumers are accustomed to seeing such products from the same source or under the same brand. A true and correct copy of printouts from the registrant's website is attached hereto as Exhibit H.

- 11. The ninth mark, a registration for FINE FOOD DITTMANN and Design (Reg. No. 4541722) is owned by a German company, Feinkost Dittmann Reichold Feinkost GmbH ("Dittmann") and again contains a long laundry list of foods from tuna fish to apple sauce to caviar. I reviewed the Dettmann website at <a href="https://www.feinkost-dittmann.de">www.feinkost-dittmann.de</a>, however, and found no coconut oil at all, and I performed a search on the website's search function for both "coconut oil" and "kokosnussol" (German for coconut oil) and found no results. A true and correct copy of printouts of these search results is attached hereto as <a href="https://www.feinkost-dittmann.de">Exhibit I</a>.
- 12. The tenth and final mark cited, CELIA'S GOURMET FOODS (Reg. No. 4517535), owned by Thomas Stuntz doing business as Celia's Gourmet Foods in Bend, Oregon, is also not probative. I reviewed the registrant's website at <a href="https://www.celiasgourmetfoods.com">www.celiasgourmetfoods.com</a> and found only olive oil but no coconut oil. On or about October 6 and 7, 2015, I did a Google search for "Celia's Gourmet Foods coconut oil" and found no such product, but only a reference to the trademark registration itself. A true and correct copy of printouts of the website's products page (with no coconut oil) and the first page of Google search results is attached hereto as <a href="https://www.explicit.com">Exhibit J.</a>.

I declare under penalty of perjury that the foregoing is true and correct and this

declaration was executed in Oakland, California on the date set forth below.

Dated: October 7, 2015

By: /Eugene M. Pak/ Eugene M. Pak

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# EXHIBIT A

# CONSENT AGREEMENT

Corporation, having its principal place of business at 8275 Tournament Drive, Southwind Business Center B. Suite 305, Memphis, Tennessee 38125, and Sovena U.S.A., Inc. This Consent Agreement ("Agreement") is entered into as of June \_\_\_, 2015 (the "Effective Date") by and between Franklin Baker Company, Inc. ("Franklin Baker"), a Delaware Agreement each as a "Party" or collectively as the "Parties". ("Sovena"), a New York Corporation, having its principal place of business at 1 Olive Grove Street, Rome, New York 13441. Franklin Baker and Sovena may be referred to in this

# Recitals

"Franklin Baker GEM Marks"); 86371270, and 86371284, in connection with various coconut products (collectively, the has filed trademark applications with the United States Patent & Trademark Office ("USPTO") to register the GEM and GEM & Design marks, specifically Serial Nos. 86224113, 86224119, coconut products since as early as the 1920s, owns three federal trademark registrations for the GEM and GEM & Design marks (Registration Nos. 220,053, 3,564,154, and 3,564,153), and WHEREAS, Franklin Baker has used the marks "GEM" and "GEM & Design" for various

WHEREAS, Sovena has used the marks "GEM" and "GEM COOK WITH CONFIDENCE SINCE 1933 & Design", and owns three federal trademark registrations for the GEM and GEM COOK WITH CONFIDENCE SINCE 1933 & Design marks (Registration Nos. 3152596, "red wine vinegar," and "edible oils, namely, extra virgin olive oil, organic extra virgin olive oil, pomace olive oil, canola oil, salad oil" (collectively, the "Sovena GEM Marks"); 3568845, 4056521) in connection with "edible cooking oils", "pure corn oil and pure olive oil,"

to the approval of and has refused the registration of Franklin Baker's trademark applications to register the GEM and GEM & Design marks, specifically Serial Nos. 86224119 and 86224113, in connection with "virgin coconut oil, coconut cream", "coconut sweetener, coconut sugar, coconut flour," and "coconut milk" (the "FRANKLIN GEM Applications") based on Trademark Act Section 2(d); and registrations for the mark GEM, specifically Registration Nos. 3152596 and 3568845, in connection with "pure com oil and pure olive oil," "red wine vinegar," and "edible oils, namely, extra virgin olive oil, organic extra virgin olive oil, pomace olive oil, canola oil, salad oil" as a bar WHEREAS, in office actions dated June 21, 2014, the USPTO cited Sovena's trademark

and registration of their respective marks in connection with their respective goods under the terms and conditions below. WHEREAS the Parties wish to avoid and mitigate any potential confusion as to the use

herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree and covenant as follows: NOW, THEREFORE, in consideration of the mutual promises and covenants set forth

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# Terms and Conditions

- 1. <u>Consent.</u> Subject to the terms and conditions of this Agreement, Sovena hereby consents to the and agrees to not take any action against Franklin Baker in connection with Franklin Baker's current or future use or registration of the FRANKLIN GEM Marks so long as agrees that the FRANKLIN GEM Marks and the SOVENA GEM Marks, as set forth in this Franklin Baker is not in breach of this Agreement. Sovena is not aware of any actual confusion between the FRANKLIN GEM Marks and the SOVENA GEM Marks. Sovena believes and between them. Agreement, are sufficiently different that a likelihood of consumer confusion does not exist
- consents to, and agrees to not take any action against Franklin Baker in connection with Franklin Baker's current or future use or registration of the FRANKLIN GEM Marks so long as Franklin Baker is not in breach of this Agreement. Consent. Subject to the terms and conditions of this Agreement, Sovena hereby
- requested, which will permit the registration and maintenance of their respective marks in the the terms of this Agreement, and to provide to each other any written consents reasonably USPTO in accordance with the terms set forth herein. Further Cooperation. The Parties agree to cooperate with each other in effectuating
- 4. <u>Binding Nature</u>. This Agreement, including the Parties' respective rights and reservations herein, shall inure to the benefit of and is binding upon the respective Parties, their subsidiaries, divisions, officers, directors, agents, licensees, as well as their respective successors and assigns and all those acting in concert or participation with them or under their direction or control.
- 5. <u>Counterparts</u>. This Agreement may be executed in two counterparts, each of which is deemed an original, but both of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory will be bound until both the Parties named below have executed or caused to be executed a counterpart of this Agreement.
- if Franklin Baker abandons, as defined at 15 U.S.C. §1127, the FRANKLIN GEM Marks. Termination. This agreement and all obligations and restrictions herein shall terminate
- discussions, negotiations, and agreements, whether oral or written. Entirety. This Agreement constitutes the entire agreement between the Parties with respect to this subject matter and supersedes any and all prior or simultaneous representations,

executed as of the date first written above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be

Franklin Baker Company, Inc.	Sovena U.S.A., Inc.
Signature:	Signature: From forom the Staut
Name (print): \ John Shave	Name (print):Tomas Almeida
Title: CENERAL MANAGER	Title:Marketing Director
Date: 4-007-15	Date:06/16/2015

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# EXHIBIT B



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# Food and Beverage Ingredients



# All-purpose, multi-purpose, yeast-raised shortenings

All-purpose shortenings are designed for use in many different applications. The primary application is cookies; however, they may also be used in breads, cakes, icings and for deep fat frying. These shortenings are formulated to have a wide plastic range so the shortening is workable between 65F and 85F.

Multi-purpose shortenings are formulated to have similar characteristics as butterfat. They are used in applications such as whipped toppings, cookie fillings, candy centers, caramets and dairy toppings.

Yeast-raised dough shortenings are used in doughs that are yeast leavened. These shortenings tenderize the dough texture, contribute to mouth-feel and increase shelf life. Yeast-raised dough shortenings are formulated with a higher level of emulsifiers than standard cake and icing emulsified shortenings.

Waster Chef® shortenings

Cargill's Master Chef® line of shortenings was developed to meet the needs of commercial bakers. The line provides the flavor and texture, consistency, stability and convenience commercial bakers demand.

Trans Advantage® shortenings

Trans Advantage® shortenings are designed as low trans alternatives to traditional shortenings.

Clear Valley® all purpose shortenings

Clear Valley® Shortenings deliver superior performance for those customers who are looking for a solid shortening that is easy to work with, doesn't impart flavors into their products and creates a nutritional panel that sets them apart from their competition.

http://www.cargillfoods.com/na/en/products/oils-shortenings/Products/all-purpose-multi-p... 10/6/2015



# Food and Beverage Ingredients



# Coconut oils

Cargill's Coconut Oil is refined, bleached and deodorized. It has low viscosity and remains liquid at room

isotanker. 180kg or 190kg net drums, tins of 17kg net, bag in box (BIB) of 18kg or 25kg, 20 metric tons flexibag or

# Storage

It is essential to store the product in the original packaging in a cool and dry place.

Coconut oil is shipped in containers or flexibags or isotankers.

# Applications

# Other

Excellent for preparations of compound chocolate coatings for ice cream and chilled confections

Pliable and produces coatings that do not chip off ice cream during eating

Sharp melting profile, melts rapidly delivering an excellent mouthfeel

Some Cargill products are only approved for use in certain geographies, end uses, and/or at certain usage levels, It is the customer's responsibility to determine, for a particular geography, that (i) the Cargill product, its use and usage levels, (ii) the customer's product and its use, and (iii) any claims made about the customer's product, all comply with applicable laws and regulations.

# Contact

Request information

Site Index\_uri:<\_\_l\_l\_l\_l\_laplen/site-index/index\_isp>
Privacy\_uri:<a href="http://www.carqill.com/privacy/index\_isp">http://www.carqill.com/privacy/index\_isp>

Terms\_url:<a href="http://www.cargill.com/terms/index.jsp">http://www.cargill.com/terms/index.jsp</a>

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# Food and Beverage Ingredients



# Salad oils are liquid at room temperature. They are produced from vegetable oils that are generally only refined, bleached and deodorized; however, some are dewaxed or lightly hydrogenated and winterized so that they remain clear and brilliant at refrigerator temperature. They are recommended for applications such as retail bottling, dressings, shallow pan frying and sauces. They are usually not hydrogenated and thus low in trans fat.

**Cooking oils** are typically liquid and generally clear at room temperature and are recommended for frying, gravies, sauces and marinades. They are usually not hydrogenated and thus low in trans fat.

	Preference® 100 Soybean Oil (also available with additives)	Preference® 100 Cottonseed Oil (also available with additives)	Preference® 100W Corn Oil (also available with additives)	Preference® 100 Corn Oil (also available with additives)	Master Chef® Peanut Oil (also available with additives)	Products
Sunflower Oil	Soybean Oil	Cattonseed Oil	Com Oil	Com Oil	Peanut Oil	Ingredient Statement
	Frying, Baking, Sauces, Salad Dressings	Frying	Frying, Baking, Salad Dressings	Frying, Baking	Frying, Nut Roasting	Applications

http://www.cargillfoods.com/na/en/products/oils-shortenings/Products/salad-cooking-oils/i... 10/6/2015

Extra Virgin Olive Oil	Olive Oil (Pure Olive Oil)	Refined Olive Oil	Solo® 100 Canola Oil (also available with additives)	Preference® 100W Sunflower Oil (also available with additives)
Extra Virgin Olive Oil	Olive Oil	Refined Olive Oil	Canola Oil	
Dipping, Food Ingredient, Shallow Frying	Dipping, Salad Dressings, Sauce Preparation, Food Ingredient, Frying	To blend with Virgin or Extra Virgin Olive Oil to Make Pure Olive Oil	Frying	Baking, Frying, Spray Oil, Salad Dressings, Sauce Preparation

Some Cargill products are only approved for use in certain geographies, end uses, and/or at certain usage levels. It is the customer's responsibility to determine, for a particular geography, that (i) the Cargill product, its use and usage levels, (ii) the customer's product and its use, and (iii) any claims made about the customer's product, all comply with applicable laws and regulations.

Site Index\_url:<.1.1.1.1.1.na/en/site-index/index\_isp>

Privacy\_url:<http://www.cargill.com/privacy/index.jsp>

Terms\_url:<http://www.cargill.com/terms/index.jsp>

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# Food and Beverage Ingredients



Liquid frying shortenings are specially processed shortenings that are formulated to pour or pump at room temperature. In packaged form, the products are easily pourable from the package. Larger bulk quantity products do not require heated storage facilities.

Frying shortenings are used as heat transfer mediums during frying processes. Because the shortening becomes a significant part of the finished food as a result of absorption during frying, it contributes to the flavor and mouth feel of fried foods. These shortenings are formulated to stand up to frying conditions and to impart favorable flavor profiles to fried foods.

Products Fry King Refined Frying Shortening	Ingredient Statement  Beef Fat, Cottonseed Oil, Propylene Glycol, Propyl Gallate, Citric Acid, Dimethylpolysiloxane	Applications General frying where beef flavor is preferred
Fry King Refined Homogenized	Selected Beef Fats, Propylene Glycol, Propyl	Frying Shortening
Shortening	Gallate, Citric Acid, Dimethylpolysiloxane	
Fry King Refined Lard	Refined Lard, BHT	Refined Beans, Tortillas, Specialty
		Cakes, Bunuelos, Croissants, Breads,
		Pastries, Puff Pastry, Pie Crusts,
		Danish, Donuts, Fried Pies, all Fried
		Foods
La Tradicional Lard	Lard, BHT	General Frying
Master Chef® Deodorized A/V	Deodorized Beef Tallow, Soybean Oil, BHT, Citric	Frying Shortening
Shortening	Acid	

http://www.cargillfoods.com/na/en/products/oils-shortenings/Products/frying-shortenings/i... 10/6/2015

Master Che <sup>®</sup> Heavy Duty Frying Shortening Master Chef® S-280 Creamy Liquid Shortening	Partially Hydrogenated Soybean Oil, Dimethylpolysiloxane Partially Hydrogenated Soybean Oil with TBHQ and Citric Acid	General Frying Frying
Renaissance Deodorized A/V	Beef Fats, Soybean Oil with BHA, BHT and Citric	Pierogies, Fries, Onion Rings, All Fried
Shortening	Acid, Dimethylpolysiloxane	Food (except donuts)
Rumba Deodorized Lard	Lard, BHA, BHT, Citric Acid	Refried Beans, Stir Fry, Puff Pastry,
		Tortillas, Specialty Cakes, Danish,
		Wantons, Bunuelos, Donuts, Fried
		Pies, Other Fried Food Applications

Some Cargill products are only approved for use in certain geographies, end uses, and/or at certain usage levels. It is the customer's responsibility to determine, for a particular geography, that (i) the Cargill product, its use and usage levels, (ii) the customer's product and its use, and (iii) any claims made about the customer's product, all comply with applicable laws and regulations.

Site Index\_url:<.1.1.1.1.1.na/en/site-index/index.jsp>

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Terms\_url:<http://www.cargill.com/terms/index.jsp>

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# KHIBIT C



# Supplying the World with the Finest Halal Chicken

Home Products Export Markets About Us Press R

# We offer the following range of quality products:

(Please click on pictures to learn more about these products)



Chicken



Whole Hen

# Our Product Categories:

- French Fries
- Whole Hen
- Chicken
- Canned Beans

Pie Filling

Iodized Salt

- Canned Fruits

Please also ask about our other offerings such as yellow "salad" mustard, ketchup

# Products Exclusively distributed in Atlanta, Ga



Croquettes & Tenders

Nuggets,

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No results found for "american delight coconut oil".

Results for american delight coconut oil (without quotes):

www.gnc.com/Healthy-Delights-Coconut-Oil-Chews/product.jsp?... ▼ GNC ⋄ Shop at GNC for Healthy Delights™ Coconut Oil Chews - NU GREENS 1008887. Healthy Delights<sup>TM</sup> Coconut Oil Chews - NU GREENS ...

Healthy Delights Coconut Oil Chews 500mg | Walgreens www.walgreens.com/...delights-coconut-oil.../ID=prod621283... 
Walgreens 
500mg of coconut oil per chew, Promotes healthy metabolism\*, Helps control

appetite"; Natural energy source"; Supports immune system"; Tastes great coconut

other ... It is this thinking that has guided us in designing this website to be a ... Healthy Delights Coconut Oil Chews 500 mg. - 30 Soft Chews www.luckyvitamin.com/p-314627-healthy-natural-systems-healthy-delig... ▼ Save on Healthy Delights Coconut Oil Chews by Healthy Natural Systems and

Healthy Delights Coconut Oil Chews Supplement - Groupon https://www.groupon.com/.../gg-2-pack-of-healthy-delights-coc... Groupon \*\* Buy 1 Get 1 Free: Healthy Delights Coconut Oil Chews Dielary Supplement.

Customer Reviews: Soaper's Delight Organic Coconut Oil, 5 ... www.anazon.com/...Delight...Coconut...[8001H9305...\* Anazon.com.h.nc. v. www.anazon.com/...Delight...Coaper's Delight Organic Coconut Oil, 5 Gallons - Nature's Approved®....Used in Creams and Lotions, Grapeseed Oil is Especially Effective for ... Find coconut oil from America's top source.

Coconut Berry Delights: A Tasty Way to Eat More Coconut Oil wholenauralife com... / coconut-berry-delights - stasty-way-to-eat-more... • Dec. 3, 2012 - Coconut Berry Delights. A Tasty Why to Eat More Coconut Oil ..... Wondering if a blender would work for those of us who don't have a food ... Wondering if a blender would work for those of us who don't have a food ...

Coconut Oil Recipes - Free Coconut Recipes freecoconutrecipes.com/coconut-oil-recipes/

Jan 9, 2015 - Almond Chocolate Chip Coconut Cookies coconut oil recipe Amaranth .... coconut oil recipe Gluten Free Pumpkin Delight Muffins coconut oil recipe Gluten ...... Inc. America's source of Certified Organic Virgin Coconut Oil.

Alternative Medicine—Good Food—A Tropical Delight

www.livingnaturally.com/common/news/store\_news.asp?task... ▼
I've always believed, like millions of other Americans, that coconut oil was dietary poison thanks to its high levels of artery-choking saturaled fat. But the tide ...

welfnessmama.com > Blog > Health 🕶 101 Uses for Coconut Oil | Wellness Mama

Coconut Oil has many amazing health, skin, and cooking uses! See how many of ... DUFFY: Using oil in the mouth is just so foreign to most of us. The term 'Oil ...

Sweet Paleo: Gluten-Free, Grain-Free Delights - Google Boo...
https://books.google.com/books?visbn=1581576242
Lea Valle - 2015 - Cooking

Many of the recipes in this book use coconut products... While the American College of Allergy, Asthma and Immunology (ACAAI) does not... In fact, there was an effort years ago to replace coconut oil on the market with hydrogenated oils and...

100% Pure Coconut Oil - Bulk Coconut Oil from \$0.97/lb

Ad www.bulkapothecary.com/Coconut-Oil ▼ (888) 868-7220

4.3 rating for bulkapothecary.com
Guaranteed Lowest Price Shiph Nowl

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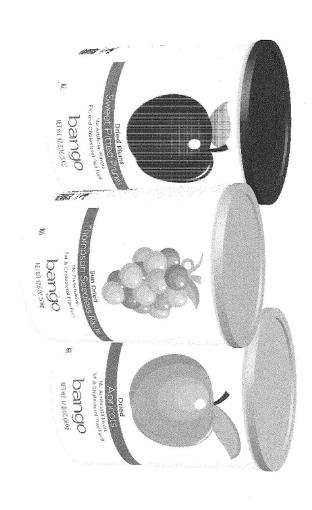
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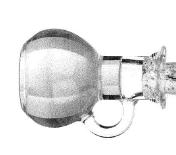


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## Tunisian Olive Oil

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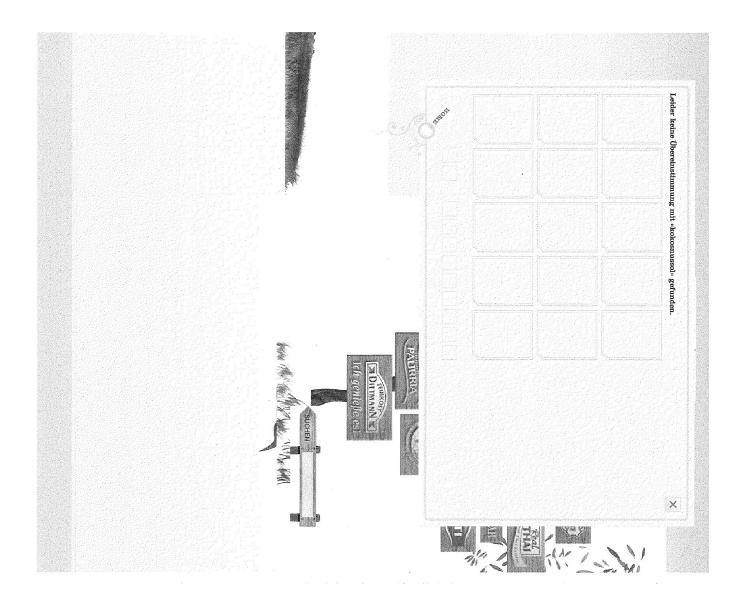
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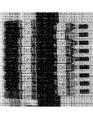


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86037721, mark text "CELIA'S GOURMET FOODS") was filed with USPTO on ... Blended oil, blended vegetable oils; canola oil; coconut oil; coconut oil and fat; ...

CELIA'S GOURMET FOODS - Trademarks411, Trademark ... www.trademarks411, com/marks86037/21-celia-sgourmet-foods - The trademark ... Link's GOURMET FOODS was fided on August 14, 2013 and ... Blended oil, blended vagetable oils; canola oil; coconut oil; coconut oil and fat; ...

# Business Directory of Oregon, Celia C. Dunham, LLC ... bizstanding.com › Oregon › CE › Celia C. Dunham. LLC · ... Members (1):Celia C. Dunham (Fince) ... Goods & Services: "GOURMET

FOODS", Blended oil; Blended vegetable oils; Canola oil; Coconut oil; Coconut oil and fat; Cooking oil; Corn oil; Edible oil; Edible oils; Flaxseed oil for ...

Grocery & Gourmet Food Store. 

## celia's gourmet foods - Trademark Hound

www.markhound.com > Categories > Meats and processed foods > Trademark page for CELIA'S GOURMET FOODS created on August 14th,... oil; Coconut oil and fet Cooking oil; Com oil; Edible oil; Edible oils; Flexseed oil for

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